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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 813

LOCAL 24 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, and KENNETH BURKE, President and Business Agent of Local 24,
Petitioners,

vs.

REVEL OLIVER and A. C. E. TRANSPORTATION COMPANY, INC., and INTERSTATE TRUCK SERVICE, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Ohio and the Court of Appeals of Summit County, Ohio

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INDEX.

	Page
Prayer	1
Citations to opinions below	2
Jurisdiction	2
Question presented	2
Constitutional provisions involved	3
Statement	3
How federal questions are presented	6
Reasons for granting the writ	7
Appendix A—Order, judgment and decree of Court of Appeals for the Ninth Judicial District	11
Appendix B—Opinion of the Supreme Court of the United States	14
Appendix C—Mandate of the Supreme Court of the United States	35
Appendix D—Order, judgment and decree of Court of Appeals for the Ninth Judicial District following remand	38
Appendix E—Judgment of the Supreme Court of the State of Ohio	41
Appendix F—Constitutional provisions involved	44

Cases Cited.

Lewin-Mathes Co., 126 N. L. R. B. No. 105	9
Polar Water Co., 120 N. L. R. B. 155, 163	9
Powell v. Alabama, 287 U. S. 45, 68	10

Shamrock Dairy, Inc., 119 N. L. R. B. 998, 1005-1006; remanded on other grounds ..... F. 2d ..... (C. A. D. C.), 124 N. L. R. B. No. 63 9
Smith's Van & Transport Co., 126 N. L. R. B. No. 129 9
Teamsters Local Union 24 v. Oliver, 358 U. S. 283, 296 ..... 2, 9
Timken Roller Bearing Co., 70 N. L. R. B. 500, 518, reversed on other grounds, 161 F. 2d 949 ..... 5, 8, 9
Tumey v. Ohio, 273 U. S. 510, 515 2

Statutes Cited.

National Labor Relations Act, as amended, 61 Stat. 136, 29 U. S. C., Sec. 151, et seq. 5
Ohio Revised Code, Sec. 1334.01 4
28 U. S. C., Section 1257 (3) 2

Constitution Cited.

United States Constitution, Article I, Section 8 3
United States Constitution, Article VI, Section 2 3

IN THE

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Respondents.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Ohio and the Court of Appeals of Summit County, Ohio.

Petitioners pray that a writ of certiorari issue to review the final judgment of the Ohio Supreme Court entered in the above entitled case on December 16, 1959. Because the Ohio Supreme Court declined to entertain Petitioners' appeal, this petition is directed to both the Ohio Supreme Court and the Ohio Court of Appeals for the Ninth Judicial District.

CITATIONS TO OPINIONS BELOW.

There are no written opinions below. The judgment of the Ohio Supreme Court is printed in Appendix E, *infra*, p. 41, and that of the Court of Appeals in Appendix D, *infra*, p. 38.

JURISDICTION.

On December 16, 1959, the Ohio Supreme Court dismissed Petitioners' appeal (r. 8-9)[1] from a permanent injunction entered by the Court of Appeals (R. 4-5; *id.* at 100-102). Mr. Justice Stewart, on March 16, 1960, granted Petitioners' motion for an extension of time, filed on March 15, 1960, and ordered that this petition be filed by March 25, 1960.

The Ohio Supreme Court dismissed Petitioners' appeal "for the reason no debatable constitutional question is involved in said cause" (r. 9) and thereby rejected Petitioners' contentions based upon the Constitution and laws of the United States. *Turney v. Ohio*, 273 U. S. 510, 515. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257 (3).

QUESTION PRESENTED.

Whether, by entering a decree permanently restraining the enforcement of those portions of the Central States Area Over-the-Road Motor Freight Agreement requiring signatory employers to utilize only their own employees

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[1] This cause was before this Court during the October, 1958, Term. *Teamsters Local 24 v. Oliver*, 358 U. S. 283. Petitioners have moved the Court to permit use of the printed record in that case in the instant proceeding. Such record is herein cited "(R. ....)." Reference to the certified record of the subsequent proceedings, a copy of which has been filed with the Clerk, is indicated by "(r. ....)."

in the performance of work within the scope of the bargaining unit, the courts below:

(a) failed to comply with the previous mandate of this Court, or

(b) invaded an area which has been pre-empted by the National Labor Relations Act, or

(c) denied Petitioners due process of law since the validity of such provisions had not been previously challenged or litigated.

CONSTITUTIONAL PROVISIONS INVOLVED.

The constitutional provisions involved are Article I, Section 8, and Article VI, Section 2 of the United States Constitution. They are printed in Appendix F, *infra*, p. 44.

STATEMENT.

Petitioner Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization having its offices in Akron, Ohio (R. 50). Petitioner Kenneth Burke is the president and business representative of Local 24 (R. 49). Petitioners are referred to collectively as the "Union".

Respondent Revel Oliver is a resident of Ohio (R. 53) and a member of the Union (R. 76). The two employers involved, A. C. E. Transportation Company, Inc. (referred to as "A. C. E."), and Interstate Service, Inc. (referred to as "Interstate"), are common carriers certificated by the Interstate Commerce Commission and the Ohio Public Service Commission and are engaged in interstate commerce (R. 106, 225). Although A. C. E. and Interstate were originally joined as co-defendants with the Union in

the state court proceedings (R. 1), they have, in the course of this litigation, taken a position adverse to that of the Union. For this reason, they are joined here as Respondents. Both A. C. E. and Interstate are parties to the Central States Over-the-Road Motor Freight Agreement (referred to as the "Central States agreement" [illegible] Ex. 1, R. 144).

The Central States agreement is a multi-state, multi-employer collective bargaining agreement and covers approximately 3500 employers who employ over 45,000 truck drivers, all of whom are engaged in what is known as over-the-road or intercity trucking (R. 98).

Article XXXII of the Central States agreement prescribes the terms and conditions of employment for individuals who own and operate motor vehicles leased to common carriers covered by the agreement (Ex. 1, pp. 38-46, R. 144). In addition, Section 4 of Article XXXII provides that "in all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier" (Ex. 1, p. 39, R. 144). Thus, as applied to Respondent Oliver, who owns multiple pieces of motor vehicle equipment (R. 53-54), Article XXXII regulates the terms of Respondent Oliver's employment only on the infrequent (R. 71) occasions which he drives; however, Section 4 of Article XXXII also requires that Respondent Oliver's equipment leased to A. C. E. and Interstate (R. 53-54) be operated by employees of such employers. The **rental** for such equipment is in no way regulated by Article XXXII.

Respondent Oliver, alleging a violation of the Ohio Anti-trust law (Ohio Revised Code, Sec. 1331.01), commenced an action in the Common Pleas Court for Summit County, Ohio, to restrain the enforcement of Article XXXII. Petitioners defended, *inter alia*, on the ground

that the National Labor Relations Act, as amended, 61 Stat. 136, 29 U. S. C., Sec. 151, *et seq.* (referred to as the "National Act") divested the state of jurisdiction (R. 22-23). This defense was rejected and an injunction issued (R. 181-182). Hearing the case *de novo*, the Ohio Court of Appeals for the Ninth Judicial District rejected Petitioners' contentions and entered a permanent injunction supplanting the decree of the Common Pleas Court (R. 256-257, App. A, *infra*, p. 11). Petitioners' appeal to the Ohio Supreme Court was "dismissed for the reason no debatable constitutional question is involved in said cause" (R. 271).

This Court granted certiorari on May 26, 1958 (R. 272), 356 U. S. 966. Following the submission of briefs and the presentation of oral argument, the judgment below was reversed (358 U. S. at 297) and the cause remanded "for proceedings not inconsistent with the opinion of this Court" (r. 3-4, App. C, *infra*, p. 35). In its opinion (App. B, *infra*, p. 14), this Court held "that the obligation under Section 8 (d) [of the National Act] on the carriers and their employees to bargain collectively 'with respect to wages, hours and other conditions of employment' and to embody their understanding in a 'written contract incorporating any agreement reached', found an expression in the subject matter of Article XXXII. See *Timken Roller Bearing Co.*, 70 NLRB 500, 515, reversed on other grounds, 161 F. 2d 949." 358 U. S. at 294-295. This Court also concluded that the federalized collective bargaining structure established by the National Act left "no room . . . for the application here of this state policy limiting the solution that the parties' agreement can provide to the problems of wages and working conditions." 358 U. S. at 296.

Following the remand, the state Court of Appeals, at the request of Respondent Oliver, scheduled a hearing to

determine the character of the order to be entered. Rejecting Petitioners' contention that this Court's mandate required a complete dissolution of the previous injunction and a dismissal of the cause, the Court of Appeals entered the following judgment:

> "It is therefore Ordered, Adjudged and Decreed that the previous order of this Court as it concerns and applies to Revel Oliver, appellee, as a lessor-driver is set aside and held for naught, but as it concerns and applies to Revel Oliver, appellee as a lessor-owner and employer of drivers of his equipment, the order of injunction herein entered September 30, 1957, shall continue in full force and effect according to right and justice" (r. 5; App. D, *infra*, p. 38).

Petitioners appealed from this judgment contending that the judgment of the Court of Appeals failed to implement this Court's mandate, invaded the area of federally protected bargaining and denied Petitioners due process of law guaranteed under the Fourteenth Amendment (r. 17-18). The Ohio Supreme Court found "no debatable constitutional question" and dismissed Petitioners' appeal (r. 9).

The instant petition addresses itself to these federal issues which the court below declined to review.

HOW FEDERAL QUESTIONS ARE PRESENTED.

The federal questions involved in the instant proceeding arose as a consequence of the "Journal Entry Conforming to Mandate" entered by the state court of appeals on August 14, 1959 (r. 4-5, *id* at 100-102). Petitioners specifically asserted the federal issues, of which review is sought here, in their specification of errors filed in the Ohio Supreme Court (r. 17-18).

REASONS FOR GRANTING THE WRIT.

The first judgment entered by the state Court of Appeals, while declaring Article XXXII "void and unenforceable" (R. 256), evidenced a singular preoccupation with Section 12 of the Article which establishes minimum lease rates applicable to owner drivers (R. 256-257, App. A, *infra*, p. 11). During the course of the litigation, Respondent Oliver repeatedly asserted that his attack was directed against the provisions of Article XXXII "which provide for a fixed rate per mile for all equipment owned and driven by Respondent Oliver" (R. 32, see also: R. 238; Brief of Resp. Oliver in Opposition to Pet. for Writ of Cert., pg. 25; Brief for Resp. Oliver, pg. 29). This court, in view of the foregoing, concluded "that the Ohio courts' opinions and judgments relate only to the validity of the Article as applied at such times" as Respondent "Oliver drove one of his vehicles for a carrier" (358 U. S. at 293).

Upon remand to the state courts, the decree entered by the Court of Appeals, provides that "the order of injunction herein entered September 30, 1957, shall continue in full force and effect" except "as it concerns and applies to Revel Oliver, appellee, as a lessor-driver" (r. 5, App. D, *infra*, p. 38). Thus, in order to determine the impact of the decree currently in effect, it is necessary to examine Article XXXII, the original journal entry of the Court of Appeals and the subsequent entry purporting to conform with the mandate of this Court.

The only portions of Article XXXII which directly affect Respondent Oliver as a non-driving lessor of motor vehicle equipment are found in Sections 4 and 5 of the Article (Ex. 1, p. 39, R. 144). These two sections require the Respondent carriers to use their own employees in the operation of leased equipment and requires the carriers to use their own available equipment before leasing additional equip-

ment. Unless the two injunctions entered by the Court of Appeals (App. A and D, *infra*, pp. 11, 38) when read together enjoin nothing, it must be concluded that the courts below have restrained the enforcement of Sections 4 and 5 of Article XXXII. (Cf. Petitioners' brief on the merits, filed with this Court in the first appeal, pp. 26-28).

The procedural progeny of almost five years of litigation necessitated the rather extended summary of case set forth. Having presented such summary, the particular reasons for granting this petition may be briefly stated.

1. *The courts below failed to implement the mandate of this Court*: In its mandate, this Court remanded the cause to the courts below "for proceedings not inconsistent with [its] opinion" (r. 4). Such opinion, by virtue of its reliance upon *Timken Roller Bearing Co.*, 70 N. L. R. B. 500, 518, reversed on other grounds, 161 F. 2d 949, plainly advised the courts below that Sections 4 and 5 of Article XXXII are well within the ambit of federally collected bargaining. *Timken*, at the page cited by this Court (70 N. L. R. B. at 518), holds that subcontracting practices are "properly included within the scope of bargaining" because such practices so "vitally affect . . . employees by progressively undermining their tenure of employment."

Sections 4 and 5 of Article XXXII, in substance, require signatory employers such as A. C. E. and Interstate to use their own employees in the performance of duties (truck driving) within the scope of the collective bargaining unit. The manifest purpose of such provisions is to prevent the progressive curtailment of jobs in the collective bargaining unit; and such provisions are therefore beyond the reach of the state. Since all of the foregoing was readily discernible on the face of this Court's opinion, it is submitted that the judgment entered below falls far short of implementing this Court's mandate.

2. *The courts below invaded the area of federally protected collective bargaining*: As demonstrated above, Sections 4 and 5 of Article XXXII have, as their office, the protection of the integrity of the collective bargaining unit from the progressive withdrawal of jobs from such unit which inevitably would result from unregulated subcontracting practices. Hence, such provisions represent the contractual fruition of the Respondent carriers' duty to bargain imposed by the National Act. *Timken Roller Bearing Co.*, 70 N. L. R. B. 500, 518, reversed on other grounds, 161 F. 2d 949. *See also*: *Smith's Van & Transport Co.*, 126 N. L. R. B. No. 129; *Lorin-Mathes Co.*, 126 N. L. R. B. No. 105; *Polar Water Co.*, 120 N. L. R. B. 155, 163; *Shamrock Dairy, Inc.*, 119 N. L. R. B. 998, 1005-1006, remanded on other grounds ... F. 2d ... (C. A. D. C.), 124 N. L. R. B. No. 63. "Since the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State." *Teamsters Local Union 24 v. Oliver*, 358 U. S. 283, 296.

3. *The courts below denied Petitioners due process of law by enjoining Sections 4 and 5 of Article XXXII, since the validity of such provisions had not been previously challenged or litigated*: This third, *alternative* issue arises *only* in the event this Court answers the first question in the negative and declines to answer the second question urged by Petitioners.[2] Stated differently, if this Court concludes that the validity of Sections 4 and 5 of Article XXXII was not involved in the litigation, and therefore concludes that the judgment of the courts below does not contravene its mandate and, for the same reason, is of the

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[2] Respondent Oliver in the Common Pleas Court (R. 32), the Court of Appeals (R. 238) and in this Court (Resp. Oliver Brief, p. 20) centered his attack upon the minimum lease rate provisions of Section 12 of Article XXXII which are applicable only to owner-driven equipment.

opinion that there is no occasion to review the status of such provisions under the National Act, it should be held that Petitioners have been denied due process of law.

For the second judgment of the Ohio Court of Appeals unmistakably enjoins the enforcement of Sections 4 and 5 of Article XXXII; and if the validity of these provisions was not involved in the litigation, Petitioners have been denied the benefit of important contractual rights without having been accorded notice, hearing and trial of the validity of such provisions. Such denial of due process (*Powell v. Alabama*, 287 U. S. 45, 68) independently supports this petition for a writ of certiorari.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

State of Ohio, Summit County. } ss.

In the Court of Appeals for the Ninth Judicial District.

Case No. 4679.

Revel Oliver, etc., Appellee,

vs.

All States Freight, Inc., et al.,
A. C. E. Transportation Co., Inc., et al.,
Appellees,

Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, etc., et al.,
Appellants.

Journal Entry.
September 30, 1957.

1. This cause came on to be heard upon the appellee's amended petition, the answers of the appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and Kenneth Burke, the President and Business Agent for Local No. 24, upon the evidence, the briefs and arguments of counsel for all parties and after due and careful consideration the Court finds:

2. (a) At the time leases for the rental of plaintiff appellee's motor equipment were in full force and effect between plaintiff appellee and defendants appellees, A. C. E. Transportation Co., Inc., and Interstate Truck Service, Inc., the Union and A. C. E. Transportation Co., Inc., and

Interstate Truck Service, Inc., executed a contract, the provisions of Article 32 thereof being as follows:

[The article appears in full test as an appendix to the opinion of this Court, Appendix B, *infra*, p. 28.]

2. (b) Plaintiff appellee is an independent contractor.

(c) Article 32 of the contact is not within the protection provided by Section 157 of the Labor Management Relations Act of 1947.

(d) Article 32 squarely is in conflict with the public policy of the State of Ohio as reflected in Sec. 1331.01 R. C. et seq. and is void and unenforcible.

(e) The plaintiff-appellee will be injured if the defendants-appellants carry out the provisions of Article 32;

(f) The plaintiff-appellee has no remedy under the Labor Management Relations Act or any other federal legislation;

(g) Jurisdiction in the state court exists; and

(h) It is the duty of this court to exercise its powers to restrain the defendants-appellants from enforcing the terms of Article 32.

3. It is therefore Ordered, Adjudged and Decreed:

(a) That the defendants-appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants: Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and each of them, their agents, representatives and successors or persons, acting, by, through or for them, or in concert with each other, are hereby perpetually restrained and enjoined from entering into any agreements one with the other or carrying out the effects, requirements or terms of any such agreement, which will require the alteration, cancellation or violation of plaintiff-appellee's existing lease or leasing agreement or any such agreement hereafter renewed or renegotiated and entered into, and (b) That

the defendants-appellees, A. C. E. Transportation Co., Inc.; Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of said Local and each of them and the successor of each and those acting in concert with said defendants-appellees and appellants are hereby perpetually enjoined and restrained from entering into any combination, arrangement, agreement or stipulation in the future, or the negotiation therefor, the purpose, intent or tendency of which is to fix or determine in any manner the rate to be charged for the use of plaintiff's equipment, leased by said plaintiff-appellee to the defendants-appellees, A. C. E. Transportation Co., Inc., and Interstate Truck Service, Inc., and (c) That the said defendants-appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of said Local and each of them and the successors of each are hereby perpetually enjoined from giving force and effect to Section 32 of the Contract between them as is fully set forth in this Court's finding, or any modification or alteration thereof, the import, effect or tendency of which shall attempt to fix the rates and the use of plaintiff-appellee's equipment or to fix or determine the return for plaintiff-appellee's capital investment in said equipment.

4. To all of which finding, judgment and order, the defendants-appellants and Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent for Local No. 24 are granted proper exceptions.

Approved:

Oscar Hunsicker,
Judge.

APPENDIX B.

Supreme Court of the United States.

No. 49.—October Term, 1958.

Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, et al., Petitioners,

v.

Revel Oliver, A. C. E. Transportation Company, Inc., and Interstate Truck Service, Inc.

On Writ of Certiorari to the Supreme Court of Ohio and Court of Appeals of Ohio, Ninth Judicial District.

[January 19, 1959.]

Mr. Justice Brennan delivered the opinion of the Court.

As the result of multiemployer, multistate collective bargaining with the Central States Drivers Council, comprising local unions of truck drivers affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, a collective bargaining agreement, the "Central States Area Over-the-Road Motor Freight Agreement," effective February 1, 1955, and expiring January 31, 1961, was entered into by the locals and motor carriers in interstate commerce who operate under the authority of the Interstate Commerce Commission[1] in 12 midwestern States, including Ohio.[2] Article

[1] Certificates of convenience and necessity are issued to common carriers pursuant to §§ 206-208 of the Interstate Commerce Act, 49 Stat. 551, 552, as amended, 49 U. S. C. §§ 306-308; permits are issued to contract carriers pursuant to § 209, 49 Stat. 552, as amended, 49 U. S. C. § 309.

[2] The agreement covers between 3,000 and 3,500 employers and between 45,000 and 50,000 truck drivers. The locals covered in Ohio

XXXII of this collective bargaining agreement[3] prescribes terms and conditions which regulate the minimum rental and certain other terms of lease when a motor vehicle is leased to a carrier by an owner who drives his vehicle in the carrier's service.[4] The Ohio courts enjoined the petitioner, Ohio's Teamsters Local 24 and its president, and the respondent carriers, A. C. E. Transportation Company, Inc., and Interstate Truck Service, Inc., Ohio employers, from giving effect to the provisions of Article XXXII. The Ohio courts held that the Article violates the Ohio antitrust law, known as the Valentine Act.[5] The question

consist of approximately 500 employers and 6,000 drivers. Upwards of 90% of the Ohio drivers drive equipment owned by carriers who operate under I. C. C. certificates or permits. The rest of the covered drivers own their own equipment, usually one vehicle, but since they are not holders of I. C. C. certificates or permits they lease their equipment to, and drive it for, certificated or permitted carriers.

[3] For the text of Article XXXII, see Appendix.

[4] For details of I. C. C. regulations governing the relationship between certificated carriers and the lessors of motor vehicle equipment, see the discussion in *American Trucking Assns., Inc. v. United States*, 344 U. S. 298.

[5] The specific provision involved, Ohio Rev. Code, § 1331.01, provides as follows:

"As used in sections 1331.01 to 1331.14, inclusive, of the Revised Code:

"(A) 'Person' includes corporations, partnerships and associations existing under or authorized by any state or territory of the United States, or a foreign country.

"(B) 'Trust' is a combination of capital, skill, or acts by two or more persons for any of the following purposes:

"(1) To create or carry out restrictions in trade or commerce;

"(2) To limit or reduce the production, or increase or reduce the price of merchandise or a commodity;

"(3) To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce, or a commodity;

"(4) To fix at a standard or figure, whereby its price to the public or consumer is in any manner controlled or established, an article

is whether the fact that the Article was contained in an agreement which was the fruit of the exercise of collective bargaining rights under the National Labor Relations Act[6]

or commodity of merchandise, produce or commerce intended for sale, barter, use, or consumption in this state;

"(5) To make, enter into, execute, or carry out contracts, obligations, or agreements of any kind by which they bind or have bound themelves not to sell, dispose of, or transport an article or commodity, or an article of trade, use, merchandise, commerce, or consumption below a common standard figure of fixed value, or by which they agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of an article, commodity, or transportation between them or themselves, and others so as directly or indirectly to preclude a free and unrestricted competition among themselves, purchasers, or consumers in the sale or transportation of such article or commodity, or by which they agree to pool, combine, or directly or indirectly unite any interests which they have connected with the sale or transportation of such article or commodity, that its price might in any manner be affected.

"A trust as defined in division (B) of this section is unlawful and void."

[6] Involved are §§ 7 and 8 of the National Labor Relations Act, as amended and re-enacted by the Labor Management Relations Act, 61 Stat. 140, 29 U. S. C., §§ 157, 158. Section 7 is as follows:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

Sections 8 (a) (5) and 8 (b) (3) require employers and labor organizations to bargain collectively. Section 8 (d), in pertinent part, provides:

"For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party . . ."

precluded the Ohio courts from applying the Ohio antitrust law to prohibit the parties from carrying out the terms of the Article they had agreed upon in bargaining. No claim is made that Article XXXII violates any provision of federal law.

The Article is in express terms made applicable only to a lessor-driver when he himself drives his vehicle in the business of the lessee-carrier. § 1. The Article, at least in words, constitutes the lessor-driver an employee of the carrier at such times: "The employer [the carrier] expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished." § 4. His wages, hours and working conditions are then to be those applied to the carrier's drivers of carrier-owned vehicles, and he has "seniority as a driver only." § 2. He must operate his vehicle at such times "exclusively in . . . [the carrier's] . . . service and for no other interests." § 1. The carrier "agrees to pay . . . social security tax, compensation insurance, public liability and property damage insurance, bridge tolls" and various other fees imposed on motor freight transportation, except "that the owner-driver shall pay license fees in the state in which title is registered." § 10. The lessor-driver must be compensated by "separate checks . . . for driver's wages and equipment rental." § 6. The wage payment must be in the amount of "the full wage rate and supplementary allowances" payable to carrier drivers similarly circumstanced who drive carrier-owned vehicles. § 12 (a). The equipment rental payment must be in an amount not less than "the minimum rates" specified by the Article which "result from the joint determination of the parties that such rates represent only the actual cost of operating such [leased] equipment. The parties have not attempted to negotiate a profit for the owner-driver." § 12 (b). All leases by union members who drive

their vehicles for carriers in effect on the operative date of the collective bargaining agreement are to "be dissolved or modified within thirty (30) days" to conform to the terms and conditions of the Article. § 15. The parties declare that "the intent of this clause [the Article] . . . is to assure the payment of the Union scale of wages . . . and to prohibit [a carrier from] the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wage scales provided in this Agreement. . . . [and] to prevent the continuation of or formation of combinations or corporations or so-called lease of fleet arrangements whereby the driver [of his own vehicle] is required to and does periodically pay losses sustained by the corporation or fleet arrangement, or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay." § 16.

The respondent, Revel Oliver, a member of the union, is the owner of motor equipment[7] which, at the time the collective bargaining agreement was negotiated, was subject to written lease agreements with the carrier respondents, A. C. E. Transportation Company, Inc., and Interstate Truck Service, Inc. The terms and conditions of the leases, particularly in regard to rental compensation, differ substantially from those provided in Article XXXII.[8]

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[7] Oliver is rather unusual among Ohio owner-drivers because he owns not one vehicle but a fleet, six trucks and four trailers, each of which is under a lease agreement with one or the other of the carrier respondents. Oliver drove only occasionally, "every month or so for A. C. E. and every 8 months or so for Interstate" and Article XXXII applied to his leases only as to the vehicle he drove on those occasions.

[8] Accordingly, § 15 of Art. XXXII required the carriers to take steps to modify both agreements. The Interstate Truck Service lease with Oliver was for a fixed term, but contained a five-day cancellation clause. The agreement between A. C. E. and Oliver was not for any fixed term and was brought into effect by the issuance of individual waybills and manifests for particular hauls.

Oliver brought this action on January 20, 1955, in the Court of Common Pleas, Summit County, Ohio, for an injunction restraining the petitioners and the respondent carriers from carrying out the terms of Article XXXII. He obtained a temporary restraining order upon sworn allegations. At the trial the respondent carriers joined with Oliver in making the attack on the Article. The petitioners defended on the ground that the State could not lawfully exercise power to apply its antitrust law to cause a forfeiture of the product of the exercise of federally sanctioned collective bargaining rights. The union justified the Article as necessary to prevent undermining of the negotiated drivers' wage scale said to result from a practice of carriers of leasing a vehicle from an owner-driver at a rental which returned to the owner-driver less than his actual costs of operation, so that the driver's wage received by him, although nominally the negotiated wage, was actually a wage reduced by the excess of his operating expenses over the rental he received. The Court of Common Pleas held in an unreported opinion that the National Labor Relations Act could not be "reasonably construed to permit this remote and indirect approach to the subject of wages," and that Article XXXII was in violation of the State's antitrust law because "there are restrictions and restraints imposed upon articles [the leased vehicles] that are widely used in trade and commerce. . . . [and] preclude an owner of property from reasonable freedom of action in dealing with it." On the petitioners' appeal to Ohio's Ninth Judicial District Court of Appeals that court heard the case *de novo* and affirmed the judgment of the Court of Common Pleas, adopting its opinion. The Court of Appeals entered a permanent injunction perpetually restraining the petitioners and the respondent carriers (1) "from entering into any agreements . . . or carrying out the . . . requirements . . . of any such agreement,

which will require the alteration" of Revel Oliver's "existing lease or leasing agreement"; (2) "from entering into any . . . agreement or stipulation in the future, or the negotiation therefore, the . . . tendency of which is to . . . determine in any manner the rate to be charged for the use of" Revel Oliver's equipment; (3) "from giving force and effect to Section 32 [*sic*] of the Contract . . . or any modification . . . thereof, the . . . tendency of which shall attempt to fix the rates" for the use of Revel Oliver's equipment.[9] Petitioners' appeal

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[9] The restraints entered by the judgment and order of the Court of Appeals filed September 30, 1957, are:

"(a) That the defendants-appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and each of them, their agents, representatives and successors or persons acting by, through or for them or in concert with each other, are hereby perpetually restrained and enjoined from entering into any agreements one with the other or carrying out the effects, requirements or terms of any such agreement, which will require the alteration, cancellation or violation of plaintiff-appellee's [Revel Oliver] existing lease or leasing agreement or any such agreement hereafter renewed or renegotiated and entered into, and

"(b) That the defendants-appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of said Local and each of them and the successor of each and those acting in concert with said defendants-appellees and appellants are hereby perpetually enjoined and restrained from entering into any combination, arrangement, agreement or stipulation in the future, or the negotiation therefor, the purpose, intent or tendency of which is to fix or determine in any manner the rate to be charged for the use of plaintiff's equipment leased by said plaintiff-appellee to the defendants-appellees, A. C. E. Transportation Co., Inc., and Interstate Truck Service, Inc., and

"(c) That the said defendant-appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of said Local and each of them and the successors of each are hereby perpetually enjoined from giving force and

to the Ohio Supreme Court was dismissed for want of a debatable constitutional question. 167 Ohio St. 299, 147 N. E. 2d 856. We granted certiorari to consider the important question raised of the interaction of state and federal power arising from the petitioner's claim that the Ohio regulation abridges rights protected by federal statute. 356 U. S. 966.

Article XXXII did not originate with the 1955 agreement. The carriers and the union have disputed since 1938 the terms of a carrier's hire of a lessor's driving services with his leased vehicle. The usual lease is by the owner of a single vehicle who hires out his services as driver with his vehicle. A carrier's representative who has participated in all contract negotiations since those leading to the 1938 agreement testified to the history. According to him, the nub of the Union's position over the two decades has been that the carriers abuse the leasing practice, particularly by paying inadequate rentals for the use of leased vehicles, with the result "that part of the men's wages for driving was being used for the upkeep of their vehicles . . . They [the union] claimed that the leased people were breaking down the rate structure . . . ." The union's demands for contract provisions to safeguard against the alleged abuse were designed also to "secure a living wage [for the lessor] plus an adequate rental for his equipment." A minimum rental clause first appeared in the 1938 agreement which also contained provisions comparable to §§ 8, 10 and 14 of present Article XXXII. In 1939, after the union claimed that "there was a lot of people that was transferring their title into other people's name to avoid

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effect to Section 32 [*sic*] of the Contract between them as is fully set forth in this Court's finding, or any modification or alteration thereof, the import, effect or tendency of which shall attempt to fix the rates and the use of plaintiff-appellee's equipment or to fix or determine the return for plaintiff-appellee's capital investment in said equipment."

the conditions of the contract." § 3 was added to provide that "certificate and title to the equipment must be in the name of the actual owner." When the dispute brought the parties to the verge of a strike in 1941, the note to § 1 and §§ 13, 15, 16, 17 and 18 came into the agreement. But by 1946 the controversy reached a pitch where the union demanded agreement from the carriers to abolish the leasing practice: "the unions were going to refuse the addition of any individual owners, and the unions also desired to make certain restrictions on the use of owner-operators, again claiming that the . . . company operators were taking advantage of certain provisions of the contract." This demand was compromised by the addition of § 19 restricting leasing to carriers "who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state"; the section "represented the compromise between the union position that it should abolish all owner-operators and the companies' contention there should be no limitation."

First. The Ohio courts rejected the petitioners' contention that the evidence conclusively established that Article XXXII dealt with subject matter within the scope of "collective bargaining" in which federal law gave petitioners the right to engage. The state courts rested their judgments principally on the minimum rental regulations of § 12 of the Article. The principal discussion occurs in the opinion of the Court of Common Pleas. These regulations were held to constitute the Article a price-fixing arrangement violating the Ohio antitrust law in that they evidenced "concerted action of the Union combining with a non-labor third party in a formal contract. . . . [the] effect [of which] is to oppress and destroy competition. . . . [and] preclude an owner of property from reasonable freedom of action in dealing with it."

It seems to us that in considering whether the Article deals with a subject matter within the scope of collective bargaining as defined by federal law the Ohio courts did not give proper significance to the Article's narrowly restricted application to the times when the owner drives his leased vehicle for the carrier, and to the adverse effects upon the negotiated wage scale which might result when the rental for the use of the leased vehicle was unregulated at these times. Since no claim was presented to the Ohio courts that the petitioners sought to apply these regulations to Revel Oliver's arrangements with the respondent carriers except on the very infrequent and irregular occasions when Oliver drove one of his vehicles for a carrier, we take it that the Ohio courts' opinions and judgments relate only to the validity of the Article as applied at such times. This would necessarily be the case as the text of the Article, and that text as illumined by its history, conclusively establish that the regulations in no wise apply to the terms of lease of a vehicle when driven by a driver not the owner of the vehicle; the wages, hours and working conditions to be observed by contracting employers of non-owner drivers are governed by the general provisions in that regard found in other articles of the collective bargaining agreement.

In the light of the Article's history and purpose, we cannot agree with the Court of Common Pleas that its regulations constitute a "remote and indirect approach to the subject of wages," outside the range of matters on which the federal law requires the parties to bargain. The text of the Article and its unchallenged history show that its objective is to protect the negotiated wage scale against the possible undermining through diminution of the owner's wages for driving which might result from a rental which did not cover his operating costs. This is thus but an instance, as this Court said of a somewhat sim-

ilar union demand in another case, in which a union seeks to protect lawful employee interests against what is believed, rightly or wrongly, to be "a scheme or device utilized for the purpose of escaping the payment of union wages and the assumption of working conditions commensurate with those imposed under union standards." *Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc.*, 311 U. S. 91, 98-99. Looked at in this light, as on the evidence it must be, to determine its relevance to the collective bargaining rights under the Federal Act, the point of the Article is obviously not price fixing but wages. The regulations embody not the "remote and indirect approach to the subject of wages" perceived by the Court of Common Pleas but a direct frontal attack upon a problem thought to threaten the maintenance of the basic wage structure established by the collective bargaining contract. The inadequacy of a rental which means that the owner makes up his excess costs from his driver's wages not only clearly bears a close relation to labor's efforts to improve working conditions but is in fact of vital concern to the carrier's employed drivers: an inadequate rental might mean the progressive curtailment of jobs through withdrawal of more and more carrier-owned vehicles from service. Cf. *Bakery Drivers Local v. Wohl*, 315 U. S. 769, 774. It is not necessary to attempt to set precise outside limits to the subject matter properly included within the scope of mandatory collective bargaining, cf. *Labor Board v. Borg-Warner Corp.*, 356 U. S. 342, to hold, as we do, that the obligation under § 8 (d) on the carriers and their employees to bargain collectively "with respect to wages, hours and other conditions of employment" and to embody their understanding in "a written contract incorporating any agreement reached," found an expression in the subject matter of Article XXXII. See *Timken Roller Bearing Co.*, 70 N. L. R. B. 500, 518, reversed on other grounds, 161 F. 2d 949. And certainly bargaining

on this subject through their representatives was a right of the employees protected by § 7 of the Act.

Second. We must decide whether Ohio's antitrust law may be applied to prevent the contracting parties from carrying out their agreement upon a subject matter as to which federal law directs them to bargain. Little extended discussion is necessary to show that Ohio law cannot be so applied. We need not concern ourselves today with a contractual provision dealing with a subject matter that the parties were under no obligation to discuss; the carriers as employers were under a duty to bargain collectively with the union as to the subject matter of the Article, as we have shown. The goal of federal labor policy, as expressed in the Wagner and Taft-Hartley Acts, is the promotion of collective bargaining: to encourage the employer and the representative of the employees to establish, through collective negotiation, their own charter for the ordering of industrial relations, and thereby to minimize industrial strife. *See Labor Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45; *Labor Board v. American National Ins. Co.*, 343 U. S. 395, 401-402. Within the area in which collective bargaining was required, Congress was not concerned with the substantive terms upon which the parties agreed. Cf. *Terminal Railroad Assn. v. Brotherhood of Railroad Trainmen*, 318 U. S. 1, 6. The purposes of the Acts are served by bringing the parties together and establishing conditions under which they are to work out their agreement themselves. To allow the application of the Ohio antitrust law here would wholly defeat the full realization of the congressional purpose. The application would frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving, and in the solution of which it imposed no limitations relevant here. Federal law here created the duty upon the parties to bar-

gain collectively; Congress has provided for a system of federal law applicable to the agreement the parties made in response to that duty, *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448; and federal law sets some outside limits (not intended to be exceeded here) on what their agreement may provide, see *Allen Bradley Co. v. Local Union*, 325 U. S. 797; cf. *United States v. Employing Plasterers Assn.*, 347 U. S. 186, 190. We believe that there is no room in this scheme for the application here of this state policy limiting the solutions that the parties' agreement can provide to the problems of wages and working conditions. Cf. *California v. Taylor*, 353 U. S. 553, 566-567. Since the federal law operates here, in an area where its authority is paramount, to leave the parties free the inconsistent application of state law is necessarily outside the power of the State. *Hill v. Florida*, 325 U. S. 538, 542-544. Cf. *International Union v. O'Brien*, 339 U. S. 454, 457; *Amalgamated Assn. v. Wisconsin Employment Relations Board*, 340 U. S. 383; *Plankington Packing Co. v. Wisconsin Employment Relations Board*, 338 U. S. 953. The solution worked out by the parties was not one of a sort which Congress has indicated may be left to prohibition by the several States. Cf. *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board*, 336 U. S. 301, 307-312.[19] Of course, the paramount force of the federal law remains even though it is expressed in the details of a contract federal law empowers the parties to make, rather than in terms in an enactment of Congress. See *Railway Employees' Dept. v. Hanson*, 351 U. S. 225, 232. Clearly it is immaterial that the conflict is between federal

[19] In *Algoma*, state law was allowed to operate to restrict a provision of a collective bargaining contract only after it was found after an exhaustive examination of the legislative history of the Wagner Act that Congress intended to leave the special subject of the legality of maintenance of membership clauses up to the States through § 8 (3) of that Act, 49 Stat. 452. Questions of the nature that we consider today were expressly left open. 336 U. S. at 312.

labor law and the application of what the State characterizes as an antitrust law. " . . . Congress has sufficiently expressed its purpose to . . . exclude state prohibition, even though that with which the federal law is concerned as a matter of labor relations be related by the State to the more inclusive area of restraint of trade." *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 481. We have not here a case of a collective bargaining agreement in conflict with a local health or safety regulation; the conflict here is between the federally sanctioned agreement and state policy which seeks specifically to adjust relationships in the world of commerce. If there is to be this sort of limitation on the arrangements that unions and employers may make with regard to these subjects, pursuant to the collective bargaining provisions of the Wagner and Taft-Hartley Acts, it is for Congress, not the States, to provide it.

Reversed.

MR. JUSTICE WHITTAKER, believing that respondent Oliver, while driving his own tractor in the performance of his independent contract with the respondent carriers, was not an employee of those carriers, but was an independent contractor, *United States v. Silk*, 331 U. S. 704, and that, as such, he was expressly excluded from the coverage of the Labor Management Relations Act by 61 Stat. 137 (3), 29 U. S. C., § 152 (3), would affirm the judgment of the Court of Appeals for the Ninth Judicial District of Ohio.

THE CHIEF JUSTICE, MR. JUSTICE FRANKFURTER and MR. JUSTICE STEWART took no part in the consideration or decision of this case.

APPENDIX

Article XXXII of the Central States Area Over-the-Road Motor Freight Agreement.

Owner-Operators.

Section 1. Owner-operators (See Note), other than certificated or permitted carriers, shall not be covered by this Agreement unless affiliated by lease with a certificated or permitted carrier which is required to operate in full compliance with all the provisions of this Agreement and holding proper ICC and state certificates and permits. Such owner-operators shall operate exclusively in such service and for no other interests.

(NOTE: Whenever "owner-operator" is used in this article, it means owner-driver only, and nothing in this article shall apply to any equipment leased except where owner is also employed as a driver.)

Section 2. This type of operator's compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

Section 3. Certificate and title to the equipment must be in the name of the actual owner.

Section 4. In all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished.

Section 5. Certificated or permitted carriers shall use their own available equipment, together with all leased

equipment under minimum thirty day bona fide lease arrangements, on a rotating board, before hiring any extra equipment.

Section 6. Separate checks shall be issued by the certificated or permitted carriers for driver's wages and equipment rental. At no time shall the equipment check be for less than actual miles operated. Separate checks for drivers shall not be deducted from the minimum truck rental revenue. The driver shall turn in time direct to the certificated or permitted carrier. All monies due the owner-operator may be held no longer than two weeks, except where the lease of equipment agreement is terminated and in such cases all monies due the operator may be held no longer than thirty (30) days from the date of the termination of the operation of the equipment.

Section 7. Payment for equipment service shall be handled by the issuance of a check for the full mileage operated, tonnage or percentage, less any agreed advances. A statement of any charges by the certificated or permitted carrier shall be issued at the same time, but shall not be deducted in advance.

Section 8. The owner-operator shall have complete freedom to purchase gasoline, oil, grease, tires, tubes, etc., including repair work, at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

Section 9. There shall be no deduction pertaining to equipment operation for any reason whatsoever.

Section 10. The Employer or certificated or permitted carrier hereby agrees to pay road or mile tax, social security tax, compensation insurance, public liability and property damage insurance, bridge tolls, fees for certificates, permits and travel orders, fines and penalties for

inadequate certificates, license fees, weight tax and wheel tax, and for loss of driving time due to waiting at state lines, and also cargo insurance. It is expressly understood that the owner-driver shall pay the license fees in the state in which title is registered.

All tolls, no matter how computed, must be paid by the Employer regardless of any agreement to the contrary.

All taxes or additional charges imposed by law relating to actual truck operation and use of highways, no matter how computed or named, shall be paid by the Carrier, excepting only vehicle licensing as such, in the state where title is registered.

Section 11. There shall be no interest or handling charge on earned money advanced prior to the regular pay day.

Section 12. (a) All certificated or permitted carriers hiring or leasing equipment owned and driven by the owner-driver shall file a true copy of the lease agreement covering the owner-driven equipment with the Joint State Committees. The terms of the lease shall cover only the equipment owned and driven by the owner-driver and shall be in complete accord with the minimum rates and conditions provided herein, plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement.

(b) The minimum rate for leased equipment owned and driven by the owner-driver shall be:

	Per Mile
Single axle, tractor only	9½¢
Tandem axle, tractor only	10¢
Single axle, trailer only	3¢
Tandem axle, trailer only	4¢

75% of the above rates to apply for deadheading, if and when ordered, provided, however, that the 75% rate will

apply only on first empty dispatch away from the home terminal; thereafter the full equipment rental rate to apply until driver is redispatched from home terminal; the above rates to be based on 23,000-pound load limit. On load limits over 23,000 pounds, there shall be one-half (½) cent additional per mile for each 1,000 pounds or fraction thereof in excess of 23,000 pounds. There shall be a minimum guarantee of 24,000 pounds for leased equipment owned and driven by the owner-driver. Nothing herein shall apply to leased equipment not owned by a driver.

The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver.

Section 13. Driver-owner mileage scale does not include use of equipment for pickup or delivery at point of origin terminal or at point of destination terminal, but shall be subject to negotiations between the Local Union and Company. Failure to agree shall be submitted to the grievance procedure.

Section 14. There shall be no reductions where the present basis of payment is higher that the minimums established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

Section 15. It is further understood and agreed that any arrangements which have heretofore been entered into between members of this Union, either among themselves or with the Employer or with the aid of the Employer, applicable to owner-driver equipment contrary to the terms

hereof, shall be dissolved or modified within thirty (30) days after the signing of this Agreement so that such arrangements shall apply only to equipment of the owner-driver while being driven by such owner-driver. In the event that the parties cannot agree on a method of dissolution or modification of such arrangement to make the same conform to this Agreement, the question of dissolution or modification shall be submitted to arbitration, each party to select one member of the arbitration board, and the two so selected to choose a third member of said board. If the two cannot agree upon the third within five (5) days, he shall be appointed by the Joint State Committee. The decision of said board to be final and binding.

Section 16. It is further agreed that the intent of this clause and this entire Agreement is to assure the payment of the Union scale of wages as provided in this Agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wage scales provided in this Agreement. This clause is intended to prevent the continuation of or formation of combinations or corporations or so-called lease of fleet arrangements whereby the driver is required to and does periodically pay losses sustained by the corporation or fleet arrangement, or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay.

Section 17. It is further agreed that if the Employer or certificated or permitted carrier requires that the "driver-owner-operator" sell his equipment to the Employer or certificated or permitted carrier, directly or indirectly, the "driver-owner-operator" shall be paid the fair true value of such equipment. Copies of the instruments of sale shall be filed with the Union and unless objected to within ten (10) days shall be deemed satisfactory. If any question is raised by the Union as to such value, the same shall be

submitted to arbitration, as above set forth, for determination. The decision of the arbitration board shall be final and binding.

Section 18. It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of this Agreement, wherein the provisions as to compensation for services on and for use of equipment owned by the owner-driver shall be lessened, nor shall any owner-driver lease be cancelled for the purpose of depriving Union employees of employment, and any such complaint that would arise pertaining to such cancellation of lease or violation under this section shall be subject to ARTICLE X.

Section 19. (a) The use of individual owner-operators shall be permitted by all certificated or permitted carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state. It is understood and agreed that all such grievances will be promptly heard and decided with the specific purpose in mind of

(1) protecting provisions of the Union contract;

(2) prohibiting any and all violations directly or indirectly of contract provisions relating to the proper use of individual owners;

(3) prohibiting any attempts by any certificated or permitted carrier in changing his operation which will affect the rights of drivers under the terms of the contract, and generally the certificated or permitted carriers agree to assume responsibility in policing and doing everything within their power to eliminate all alleged abuses in the use of owner-drivers which resulted in the insertion of Section 19 (Article XXXIII) in the original 1945-47 Over-the-Road contract;

(4) owner-driver operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this contract;

(5) the certificated or permitted carriers agree that they will, with a joint meeting of the Unions, set up uniform rules and practices under which all such cases will be heard;

(6) it shall be considered a violation of the contract should any operator deduct from rental of equipment the increases provided for by the 1955 Amendments or put into effect any means of evasion to circumvent actual payment of increases agreed upon effective for the period starting February 1, 1955, and ending January 31, 1961.

(b) No owner-operator shall be permitted to drive or hold seniority where he owns three or more pieces of leased equipment. This provision shall not apply to present owner-operators having three or more pieces of equipment under lease agreement, but such owner-operator shall not be permitted to put additional equipment in service so long as he engages in work covered by this Agreement or holds seniority. Where owner-operator drives, he can hold seniority where he works sixty (60) per cent or more of time.

APPENDIX C.

February 19, 1959 — Supreme Court of United States of America. Mandate; filed, February Term.

Whereas, lately in the Court of Appeal of the State of Ohio, Ninth Judicial District, before you, or some of you, in a cause between Revel Oliver, appellee, All States Freight, Inc., et al., appellees, and International Brotherhood of Teamsters, Local No. 24, et al., appellants, No. 4679, wherein the judgment of said Court of Appeals duly entered on the 30th day of September, A. D. 1957, is in the following words, viz.:

"It is therefore Ordered, Adjudged and Decreed:

"(a) That the defendants-appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and each of them, their agents, representatives and successors or persons, acting by, through or for them, or in concert with each other, are hereby perpetually restrained and enjoined from entering into any agreements one with the other or carrying out the effects, requirements or terms of any such agreement which will require the alteration, cancellation or violation of plaintiff-appellee's existing lease or leasing agreement or any such agreement hereafter renewed or renegotiated and entered into, and

"(b) That the defendants-appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of said Local and each of them

and the successor of each and those acting in concert with said defendants-appellees and appellants are hereby, perpetually enjoined and restrained from entering into any combination, arrangement, agreement or stipulation in the future, or the negotiation therefor, the purpose, intent or tendency of which is to fix or determine in any manner the rate to be charged for the use of plaintiff's equipment leased by said plaintiff-appellee to the defendants-appellees, A. C. E. Transportation Co., Inc., and Interstate Truck Service, Inc., and

"(c) That the said defendants-appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of said Local and each of them and the successors of each are hereby perpetually enjoined from giving force and effect to Section 32 of the Contract between them as is fully set forth in this Court's finding, or any modification or alteration thereof, the import, effect or tendency of which shall attempt to fix the rates and the use of plaintiff-appellee's equipment or to fix or determine the return for plaintiff-appellee's capital investment in said equipment."

as by the inspection of the transcript of the record of the said Court of Appeals of Ohio, Ninth Judicial District, which was brought into the Supreme Court of the United States by virtue of a writ of certiorari, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And Whereas, in the present term of October, in the year of our Lord one thousand nine hundred and fifty-eight, the said cause came on to be heard before the Supreme Court

of the United States on the said transcript of record, and was argued by counsel:

On Consideration Whereof, It is ordered and adjudged by this Court that the judgment of the said Court of Appeals, in this cause be, and the same is hereby, reversed with costs.

It Is Further Ordered that Local 24 of the International Brotherhood of Teamsters, etc., et al., recover from Revel Oliver et al. One Thousand Three Hundred Fifty-four Dollars and Fifty-four Cents ($1,354.54) for their costs herein expended and have execution therefor.

And It Is Further Ordered that this cause be, and the same is hereby, remanded to the Court of Appeals of the State of Ohio, Ninth Judicial District, for proceedings not inconsistent with the opinion of this Court.

January 19, 1959.

And the same is hereby remanded to you, the said judges of the said Court of Appeals of the State of Ohio, Ninth Judicial District, in order that such execution and proceedings may be had in the said cause, in conformity with the judgment and decree of this Court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ notwithstanding.

Witness the Honorable Earl Warren, Chief Justice of the United States, the seventeenth day of February, in the year of our Lord one thousand nine hundred and fifty-nine.

James R. Browning,
Clerk of Supreme Court of the United States,

By R. J. Blanchard,
Deputy.

APPENDIX D.

State of Ohio, } ss.
Summit County. }

In the Court of Appeals, Ninth Judicial District.

Revel Oliver,

Appellee,

v.

All States Freight, Inc. et al., A. C. E. Transportation Co., Ins. et al.,

Appellees,

and

Local 24 of The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L.-C. I. O. and Kenneth Burke, President and Business Agent of Local 24,

Appellants.

No. 4679.
Journal Entry Conforming To Mandate.
Filed 7/28/59.

1. This action having been tried de novo by this Court and the Court, having made findings of fact and conclusions of law, entered its order, not in affirmance of the order of the lower Court on error proceedings but based upon the pleadings, the evidence before it, briefs and arguments of counsel, on September 30, 1957 as more fully appears in the record of this cause.

2. This cause came on further to be heard upon the mandate of the United States Supreme Court properly filed herein, appellee Revel Oliver being present by his attorney and appellee, Local 24 of The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L.-C. I. O. and Kenneth

Burke, President and Business Agent of Local 24, being present by their attorneys. Said remand is in the following words, viz:

> "And It Is Further Ordered that this cause be, and the same is hereby remanded to the Court of Appeals of the State of Ohio, Ninth Judicial District, for proceedings not inconsistent with the opinion of this court . . . and According to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ notwithstanding."

3. Our examination of the Court's opinion referred to, indicates the reversal of this Court's judgment of September 30, 1957 applies only to appellee Oliver, "on the very infrequent and irregular occasions when Oliver drove one of his vehicles for a carrier" and that the regulations of the appellant Union in Article 32 applied only at such times as the lessor driver himself drives the vehicle in the business of the lessee-carrier. The opinion further states that this Court did not give proper significance to the Articles' narrowly restricted application to the times when the owner drives his leased vehicle for the carrier, and to the adverse effects upon the negotiated wage scale, which might result when the rental of the leased vehicle was unregulated at these times. The evidence before this Court established the fact that Article 32 was applied by the appellant union and business agent to appellee Oliver not merely at the times mentioned in the opinion, but at all times to the operation of his vehicles, when driven by employees of the appellee and this Court's order of injunction, based on the evidence before it, then found and now finds after reading the opinion of the Supreme Court with the context considered in conjunction with the above quoted portions, that the order of injunction heretofore granted as it affects appellee Oliver when he himself is not driving his vehicle is unreversed and in full force and effect.

4. It is therefore Ordered, Adjudged and Decreed that the previous order of this Court as it concerns and applies to Revel Oliver, appellee, as a lessor-driver is set aside and held for naught, but as it concerns and applies to Revel Oliver, appellee as a lessor-owner and employer of drivers of his equipment, the order of injunction herein entered September 30, 1957 shall continue in full force and effect according to right and justice.

It is further ordered that the costs of $1,354.54 taxed by the Clerk of the United States Supreme Court be paid into the office of the Clerk of this Court by Revel Oliver, A. C. E. Transportation Co. and Interstate Truck Service, Inc., share and share alike.

Arthur W. Doyle,
Presiding Judge.

P. H. Stevens,
Judge.

Oscar Hansicker,
Judge.

APPENDIX E.

The Supreme Court of the State of Ohio.

January Term, A. D. 1959.

The State of Ohio, City of Columbus. }

To-wit: Wednesday, December 16, 1959.

Revel Oliver, Plaintiff Appellee, vs. No. 36249 All States Freight, Inc., et al., Defendants-Appellees, Local 24 of the International Brotherhood of Teamsters, etc., et al., Defendants-Appellants.	Appeal from the Court of Appeals of Summit County.

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Summit County, upon the motion of the appellees to dismiss the appeal, filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adjudged that the appellees recover from the appellants their costs herein expended, taxed at $.....

Ordered, That a special mandate be sent the Court of Common Pleas of Summit County, to carry this judgment into Execution.

Ordered, That a copy of this entry be certified to the Clerk of the Court of Appeals of Summit County "for entry."

I, John W. McMillan, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal of said Court.

Witness my hand and Seal of said Court this 23rd day of December, 1959.

John W. McMillan,

Clerk,

By .....,

Deputy.

The State of Ohio, }
City of Columbus. }

The Supreme Court of Ohio,

To the Honorable .....

Within and for the County of ....., Ohio, Greeting:

We do hereby command you, that you proceed, without delay, to carry the within and foregoing judgment of the Supreme Court of Ohio, in the cause of

vs.

into execution.

Witness, John W. McMillan, Clerk of the Supreme Court of Ohio, this ..... day of ....., A. D. 19....

The State of Ohio,
City of Columbus.

The Supreme Court of the State of Ohio,
of the Term of January, A. D. 1959.

To-wit: Wednesday, December 16, 1959.

Revel Oliver,
Plaintiff-Appellee,
vs. No. 36,249
All States Freight, Inc., et al., Defendants-Appellees, Local 24 of the International Brotherhood of Teamsters, etc., et al.,
Defendants-Appellants.

Motion for an Order Directing the Court of Appeals of Summit County to Certify Its Record.

It is ordered by the Court that this motion be, and the same hereby is, overruled.

Costs: Motion fee, $20.00, paid by.....

I, John W. McMillan, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the records of said Court, to-wit, from Journal No. 43, page .....

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Supreme Court this 23rd day of December, A. D. 1959.

John W. McMillan,
Clerk,

By.....
Deputy.

APPENDIX F.

Article I, Section 8.

The Congress shall have power

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations and among the several states and with the Indian tribes;

To establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas and offences against the law of nations;

To declare war, grant letters of marque and reprisal and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Article VI.

All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this constitution as under the confederation.

This constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties

made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or law of any state to the contrary not withstanding.

The senators and representatives beforementioned and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any officer or public trust under the United States.

FILE COPY

Supreme Court, U.S.
FILED
APR 21 1960
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. 813

LOCAL 24 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, and KENNETH BURKE, President and Business Agent of Local 24,

Petitioners,

vs.

REVEL OLIVER and A.C.E. TRANSPORTATION COMPANY, INC., and INTERSTATE TRUCK SERVICE, INC.,

Respondents.

BRIEF OF REVEL OLIVER AND INTERSTATE TRUCK SERVICE, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

BERNARD J. ROETZEL,
901 First National Tower,
Akron 8, Ohio,
Counsel for Revel Oliver, Respondent.

CHARLES R. IDEN,
2200 First National Tower,
Akron 8, Ohio,
Counsel for Interstate Truck Service, Inc., Respondent.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-8647

In the Supreme Court of the United States

OCTOBER TERM, 1959.

No.

LOCAL 24 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, and KENNETH BURKE, President and Business Agent of Local 24,

Petitioners,

vs.

REVEL OLIVER and A.C.E. TRANSPORTATION COMPANY, INC., and INTERSTATE TRUCK SERVICE, INC.,

Respondents.

BRIEF OF REVEL OLIVER AND INTERSTATE TRUCK SERVICE, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

HISTORY.

This case had its inception in a petition filed by the respondent, Revel Oliver, in which he alleged that he was the owner and lessor of six trucks and four trailers, each of which was under a lease agreement with one or the other of the carrier respondents. He further alleged that the petitioners herein and others had, by action and threats and other means, demanded and required that the motor carrier respondent cancel or alter or replace the leases in effect between himself and the motor carriers and that, unless restrained and enjoined, the defendant-carriers by agreement with the petitioner would cancel his leases. It was his claim that an irreparable injury would result for which there was no adequate remedy at

law and that such conduct deprived him of his free right to enter into private contracts for the leasing of his equipment and would result in an unlawful restraint of trade.

Upon a trial de novo in the Court of Appeals for the 9th Judicial District of Ohio, the Court of Appeals found the allegations to be true (in a finding R. 237) and permanently enjoined the petitioners and the carriers involved from carrying out the effects, requirements or terms of any agreement which would require the alteration, cancellation or violation of Oliver's leases and further enjoined such defendants from entering into agreements, the purpose, requirement, intent or tendency of which was to fix or determine the rate to be charged for the use of Oliver's equipment or to fix or determine the rates and the use or the return for Oliver's capital investment in said equipment.

Thereafter, the United States Supreme Court in an opinion reported at 358 U. S. 283, decided that the Ohio courts did not give proper significance to Article XXXII of the Union Contract:

> "* * * narrowly restricted application to the times *when the owner drives his leased* vehicle for the carrier, and to the adverse effects upon the negotiated wage scale which might result when the rental for the use of the leased vehicle was unregulated at *these times*." (Emphasis ours.)

The United States Supreme Court reversed the Ohio judgment and issued a mandate directed to the Court of Appeals, remanding the case for "proceedings not inconsistent with the opinion of this Court." In compliance with this mandate, the Ohio Court of Appeals ordered and decreed that the previous order as it concerned and applied to Revel Oliver as a lessor-driver "is set aside and

held for naught," but as it concerns and applies to Revel Oliver, "as a lessor-owner and employer of drivers of his equipment, the order of injunction should continue in full force and effect." (Pltf's. Brief, Appendix D).

QUESTION PRESENTED.

Did the Ohio Court of Appeals comply with the mandate issued to it remanding the case for "proceedings not inconsistent with the opinion" of the United States Supreme Court?

ARGUMENT.

Before setting forth reasons why the writ should be denied, it must be noted that we cannot accept the petitioners' view of the question presented (Petitioners' Brief page 2). We further note that this matter can be determined by an analysis of the questions presented to and decided by the courts without the citation of authority.

When petitioners state categorically (Petitioners' Brief, page 4) that the Central States Area Over-the-Road Motor Freight Agreement requires the "signatory employers to utilize only their own employees in the performance of work within the scope of the bargaining unit" as a premise for a claim that the Ohio court's decree restraining its enforcement except "when the owner drives his leased equipment" is erroneous, the question as presented loses validity since it assumes what is not true. Petitioner relies on its present interpretation of Sections 4 and 5 of Article XXXII to support its position. The fact that the opinion of this Court determined that, "Article XXXII in nowise apply (applies) to the terms of lease of a vehicle when driven by a driver not the owner" is forgotten or ignored. We believe it would be a gross misconception not in con-

formity with the judgment of the Supreme Court to conclude that this Court intended that Sections 4 and 5 of Article XXXII be given the interpretation now placed on them by petitioners. (That lessees' employees must drive all leased equipment, Petitioners' Brief page 4.) We believe the opinion of this Court herein involved held only that the Union and the carriers had a right to bargain with respect to the agreement reached in Article XXXII and that the Ohio Anti-Trust Law must yield to an agreement within the proper field of employer-employee relationships, i.e., the times when the owner drives his leased vehicle for the carrier.

The reason and logic of this Court's opinion could have no application to the right of the Ohio courts to enjoin the unlawful interference of threatened cancellation of leases where Oliver's employees, and not Oliver, drove the leased equipment.

To determine the question presented, it is necessary to examine not only the Supreme Court opinion, 358 U. S. 283, but the record, including the pleadings, the testimony and the findings and opinions of the Ohio courts, in addition to the journal entry of the Court of Appeals conforming to the mandate.

The Court of Appeals' journal entry conforming to the mandate is set forth in full in petitioners' brief (Appendix D). It cogently and concisely sets forth the conclusions of the Court of Appeals in its proceeding conforming to the mandate. It is quite true, as petitioners suggest, that the United States Supreme Court did not pass upon the legality of the injunction as it related to Oliver as lessor and non-driver. It is equally true, however, that the Ohio courts *did* determine this question when they enjoined the interference with Oliver's leases which they found threatened or present.

The fact that the petitioners had conceded that Article XXXII had no *proper* application to Oliver as a fleet owner—a position now departed from—could not alter the fact that the Ohio court had enjoined interference with Oliver's leases without bisecting Oliver as (1) a lessor-driver, and (2) a lessor-nondriver. In now contending that Sections 4 and 5 of Article XXXII require a carrier to use only its own employees in the operation of leased equipment, which would thus require the cancellation or alteration of all of Oliver's leases, the Union conforms its stated position to the factual position it had taken prior to the issuance of the injunction. This seems to be an untenable position not supported by the Article itself, nor the evidence upon trial, nor the previous claims of counsel, nor the Ohio Court of Appeals findings and judgments, nor the opinion of this Court itself. These numerous prior disclaimers of application of Article XXXII to Oliver's leases as a fleet owner (R. 93, 123, 202, 217) did not prevent the Ohio court from finding that the actual position of the Union was a contrary one. It found Oliver would be injured if the provisions of Article XXXII were carried out (viz: against him); that he had no remedy under the Labor Management Relations Act or any other Federal legislation; that it had jurisdiction and the duty to restrain the defendants from enforcing the terms of Article XXXII against Oliver in his total entity, i.e., as a lessor-driver and as a lessor-non-driver.

It must be borne in mind that respondent-Oliver's original petition was filed and a preliminary injunction obtained after the Union and the carriers informed Oliver that his leases were about to be cancelled (R. 91 and 166). This threat was not limited to the leases as they might involve Oliver at the times he drove. A letter (Exhibit 32) referred to in the Record at page 140, which was

identified as having been addressed to Oliver advising him of the impending cancellation of his leases, further supports the conclusion of the trial court, that no narrow restriction of Article XXXII was applied by the petitioner-union. Further, the only reasonably inference which could be obtained from the testimony of Business Agent Burke is that the cancellation or alteration of *all* of Oliver's leases would have been insisted upon had it not been for the injunction (R. 103).

These matters are set forth only to indicate that the Court of Appeals was fully justified in its finding of fact (reiterated in the journal entry dissolving its injunction as it related to owner-drivers) that the petitioner-union in fact applied Article XXXII *at all times* to the operation of Oliver's vehicles when driven by his employees, as well as when driven by Oliver himself. That this finding was warranted is conclusively established by the petitioners' contention (now) that it does so apply and the argument of petitioners that because it so applies, the Court of Appeals should have dissolved its injunction in its entirety. Thus, the Union would have this Court accomplish what it in fact attempted to do until enjoined, its disclaimers notwithstanding. If this Court agrees with the petitioners, it seems reasonable that the petitioners would *again* insist that the carriers cancel or alter all of Oliver's leases, rather than only those involving Oliver as a driver. This Court could not so hold without re-writing Article XXXII, nor could it extend the shield of collective bargaining beyond the agreement itself. It has not yet held that the Ohio courts cannot protect Oliver from wrongful interference with lawful contracts not within the protection afforded by Article XXXII. In so protecting Oliver, there has been no invasion of the area of federally protected collective bargaining since the only area on which the Union and the

carriers reached agreement was the narrowly restricted area intended to cover owner-drivers when driving. The carriers never agreed not to use leased equipment. They agreed only that owner-drivers would come within Article XXXII—nothing more.

Article XXXII may have effectively bisected Oliver, but the Court of Appeals journal entry conforming to the mandate merely continued a bisection it had erroneously failed to make in the first instance and which the opinion of the court required. The contention of the petitioners that the matter was not litigated and that they were deprived of due process in this respect has no basis in fact. The Court of Appeals fully implemented the mandate in the only way it could consistent with the Court's opinion.

CONCLUSION.

The journal entry of the Court of Appeals for the 9th Judicial District of Ohio fully conforms to the judgment and decree of this Court, and all issues have been decided by this Court. For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

BERNARD J. ROETZEL,
901 First National Tower,
Akron 8, Ohio,
Counsel for Revel Oliver, Respondent.

CHARLES R. IDEN,
2200 First National Tower,
Akron 8, Ohio,
Counsel for Interstate Truck Service, Inc., Respondent.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 813.

LOCAL 24 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, and KENNETH BURKE, President and Business Agent of Local 24,
Petitioners,

vs.

REVEL OLIVER and A. C. E. TRANSPORTATION COMPANY, INC., and INTERSTATE TRUCK SERVICE, INC.,
Respondents.

REPLY BRIEF

In Support of Petition for Writ of Certiorari to the Supreme Court of Ohio and the Court of Appeals of Summit County, Ohio.

Respondents, in their joint brief in opposition, appear to place principal reliance upon two separate contentions. First, Respondents urge that Sections 4 and 5 of Article XXXII, by their terms, do not require contracting carriers to use only their own employees in the operation of leased

equipment. Respondents conclude that this Court, therefore, could not have held, in its opinion, that a contract clause having such effect was within the ambit of federally protected bargaining. In short, Respondents urge that the issue was never in the case.

Secondly, Respondents apparently argue that the courts below properly retained jurisdiction to enjoin future interference with Respondent Oliver's leases, except to the extent that Respondent Oliver actually drove. If Respondents' first contention is accepted, *arguendo*, it must be concluded that Respondents' second argument amounts to a contention that the courts below had authority to enjoin Petitioners from bargaining for a clause requiring the Respondent carrier to use only its own employees in the operation of leased equipment.

Assuming, without agreeing with, the correctness of the above interpretation of the contract and decree below, it is submitted that the courts below have denied to Petitioners rights guaranteed under federal law. Respondents' contrary assertion notwithstanding, Petitioners have consistently maintained that *all drivers* of leased equipment must be, under the contract, employees of the carrier.* *However, for purposes of this case it is immaterial to determine whether the decree enjoins provisions of an existing contract which require all drivers to be employees of the carrier or whether the decree enjoins, as Respondents assert, Petitioners from demanding such a clause.* For Petitioners have a federally protected right to both bargain for and to embody in a written agreement

---

* E. g. Petitioners' brief on the merits, filed in this Court, pg. 2, expressly states with reference to section 4 of Article XXXII:

> "This Section is one of the few which directly affects Revel Oliver both as a driver of his own equipment and as a lessor of other equipment. * * * Section 4 is the transportation industry's subcontracting clause"

a contract clause which requires the carrier to use only his own employees in the operation of equipment leased to the carrier. Such a clause is no more than a traditional subcontracting clause and is therefore within the area of mandatory bargaining. The uniform course of federal decision supporting this proposition is discussed on pages 26 through 28 of Petitioners' brief on the merits and on page 9 of Petitioners' instant petition. Hence, it is not discussed here.

Petitioners are again obliged to point out, in view of Respondents' brief in opposition, that the original litigation focused upon the Petitioners' right to negotiate minimum mileage rates for the use of leased equipment. Section 12 (b) of Article XXXII establishes such rates for "leased equipment owned and driven by the owner driver . . ." (Ex. 1, pg. 41, R. 144). Such minimum lease rates apply to Respondent Oliver only when he is driving his own equipment. The mileage rate paid to him for the use of equipment which he owns but does not drive is not controlled by the contract. And Petitioners do not claim an interest in such rates. Petitioners do assert, however, that, under Section 4 of Article XXXII, the driver of such leased equipment is required to be an employee of the carrier.

In conclusion, it is submitted that, even accepting Respondents' view of the case, the courts below have trespassed upon the federal domain. For in the Respondents' view, Petitioners are prohibited, under the decree, below, from *negotiating for* a subcontracting clause. As this Court held, discussing the effects of subcontracting practices, "certainly bargaining on this subject through their representatives was a right of the employees protected by Section 7 of the Act." *Teamsters Local Union 24 v. Oliver*, 358 U. S. 283, 295.

For the foregoing reasons the petition for a writ of certiorari should be granted.

Respectfully submitted.

DAVID PREVIANT,
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Milwaukee 3, Wisconsin.

ROBERT C. KNEE,
Winters Bank Building,
Dayton, Ohio,

BRUCE LAYBOURNE,
Second National Building,
Akron, Ohio,
Counsel for Petitioners.

Of Counsel:
GOLDBERG, PREVIANT & COOPER,
DAVID LEO UELMEN,
HUGH HAFER.

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Office Supreme Court, U.S.
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JUN 10 1960
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. 813.

LOCAL 24 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, AND KENNETH BURKE, PRESIDENT AND BUSINESS AGENT OF LOCAL 24,

Petitioners,

vs.

REVEL OLIVER AND A. C. E. TRANSPORTATION COMPANY, INC. AND INTERSTATE TRUCK SERVICE, INC., and INTERSTATE TRUCK SERVICE, INC.,

Respondents.

PETITION FOR REHEARING.

CHARLES R. IDEN,
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Akron 8, Ohio,
Counsel for Interstate Truck Service, Inc., Respondent.

BERNARD J. ROETZEL,
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Akron 8, Ohio,
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THE GATES LEGAL PUBLISHING CO.; CLEVELAND, OHIO—MAIN 1-8847

In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. 813.

LOCAL 24 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, AND KENNETH BURKE, PRESIDENT AND BUSINESS AGENT OF LOCAL 24,

Petitioners,

vs.

REVEL OLIVER AND A. C. E. TRANSPORTATION COMPANY, INC. AND INTERSTATE TRUCK SERVICE, INC., and INTERSTATE TRUCK SERVICE, INC.,

Respondents.

PETITION FOR REHEARING.

To the Chief Justice and Associate Justices of The Supreme Court of the United States.

Respondents pray that a petition for rehearing be granted from the decision of the court entered on the 16th of May, 1960, in which this Court granted certiorari and reversed per curiam and without the argument of counsel a decision of the Court of Appeals of the State of Ohio, Ninth Judicial District, for the reasons hereinafter stated.

QUESTION.

Whether the United States Supreme Court has the right to place an interpretation upon a lawful agreement entered into by parties competent to contract, which interpretation is contrary to the direct language of the agreement and contrary to the interpretation placed upon the agreement by the parties for whom the interpretation was made.

STATEMENT AND ARGUMENT.

The per curiam decision by the United States Supreme Court, to which decision this petition is addressed, reversed a decision of the Court of Appeals of the State of Ohio, Ninth Judicial District, which in effect held that Article XXXII of the over-the-road contract entered into by the Teamsters Union and certain interstate motor carriers was effective only as to the lessors of equipment during such limited times when the owner-lessor drove the leased equipment. Section 1 of Article XXXII contains the following language:

> "(NOTE: Whenever 'owner-operator' is used in this article, it means owner-driver only, and nothing in this article shall apply to any equipment leased except where owner is also employed as a driver.)" (Page 38 of the Central States Area Over-the-Road Motor Freight Agreement, which agreement is at page 144 of the Record.)

The plain meaning of the foregoing language is that Article XXXII shall not be applied to any equipment leased to a carrier unless it is being driven by the owner, and that the meaning of owner-operator is limited to owner-driver, meaning one who drives his own equipment. The Article by its very language therefore does not apply either to the driver or to the equipment, except when it is

driven by the owner. This was unquestionably the intention of the parties, based upon the following statements by counsel for the Union and the Union president.

During the trial of the Common Pleas case, Mr. Previant, counsel for the Teamsters Union, made the following statement in objecting to the introduction of certain testimony:

> "Mr. Previant: If the Court please, I believe we are getting into an area here that is not covered by the pleadings or by the contract for the contract clause which is charged as a violation. I call the Court's attention to the fact that the clause or article which is challenged here is where the owner of a vehicle is the driver. The line of questioning now is directed to a relationship which is entirely to that type of relationship that is a relationship between some other person who drives the tractor which is owned by the Plaintiff here. We believe that is entirely foreign to the issues in this case." (Record 58.)

Later in the trial of the case before the Common Pleas Court, Mr. Previant made the following statement:

> "Mr. Knee pointed out in his Article 32, which is here under attack, the union says on its very face it is a device for the purpose of preserving the wage rates and working conditions of drivers as such. It applies only to that owner-driver who drives his own equipment. * * *" (Record 93.)

Witness Blunden was presented by the Teamsters Union for the purpose of explaining the origin of Article XXXII, and upon direct examination he testified as follows:

> "Q. The union's sole concern of Article 32 is as they apply to the driver?
>
> A. That is correct." (Record 123.)

Again commenting on the meaning of the Article, Mr. Previant in his opening statement in the Court of Appeals made the following statement:

> "I want to close this opening statement by again emphasizing that we are dealing here only with the man who owns and drives his own piece of equipment, while he is driving that equipment. We don't care what happens when somebody else is driving that equipment. * * *" (Record 202.)

Jimmy Hoffa, president of the Teamsters International Union, was placed upon the stand in the Court of Appeals and testified as to his understanding of the application of Article XXXII as follows:

> "Q. What is the common type of owner-operator in the area covered by this contract, the typical one?
>
> A. A man who owns and drives his own individual piece of equipment.
>
> Q. A single piece of equipment?
>
> A. That is correct.
>
> Q. Will you state whether or not this article was designed primarily for the person you have just described?
>
> A. Very clearly indicates, in the very opening section, that it only applies to the driver-owner of the piece of equipment." (Record 217.)

This honorable court recognized apparently the extent of the application of Article XXXII in its original opinion in this case (358 U. S. 283) when it made the following comment in paragraph one of its opinion:

> "* * * Article XXXII of this collective bargaining agreement prescribes terms and conditions which regulate the minimum rental and certain other terms of lease when a motor vehicle is leased to a carrier by an owner who drives his vehicle in the carrier's service * * *."

And in the first sentence of the second paragraph of that opinion, this Court made the additional comment:

> "The Article is in express terms made applicable only to a lessor-driver when he himself drives his vehicle in the business of the lessee-carrier * * *."

In presenting this petition for rehearing, petitioner is mindful of the provisions of Rule 45 of the Revised Rules of Court, which provides as follows:

> "The court looks with disfavor on the submission of cases on briefs without oral argument and therefore may, notwithstanding such submission, require oral argument by the parties."

There can be little question but what the decision of this Court in its per curiam decision radically altered and added to its original decision in this case. Originally this Court said that Article XXXII was applicable to owner-drivers, and in the per curiam decision this Court said it was also applicable to all leased equipment, whether driven by employees of the lessor or not.

It was indeed difficult for counsel for the owner-operator and the carriers to explain how this Court could make the Federal Labor Act applicable to an independent contractor in view of the explicit provision of Section 2(3) of the National Labor Relations Act and in view of the very explicit holding of the trial court of Ohio that Revel Oliver was such an independent contractor. It becomes doubly difficult for counsel to explain to clients how the Supreme Court of the United States could find that Article XXXII was applicable to leased equipment when it was driven by employees of the lessor. It becomes painfully difficult to explain to clients how this could be done without their counsel having an opportunity to at least address the court upon the subject.

Your petitioners therefore very respectfully pray that this Court will grant this petition for rehearing and will permit counsel an opportunity to appear personally before the court on the question presented in this appeal.

Respectfully submitted,

CHARLES R. IDEN,
2200 First National Tower,
Akron 8, Ohio,
Counsel for Interstate Truck Service, Inc., Respondent.

BERNARD J. ROETZEL,
901 First National Tower,
Akron 8, Ohio,
Counsel for Revel Oliver, Respondent.

CERTIFICATE.

The undersigned, sounsel for petitioning respondents, hereby certify that the attached petition for rehearing is presented to this honorable court in good faith and not for the purpose of delay.

CHARLES R. IDEN,
2200 First National Tower,
Akron 8, Ohio,
Counsel for Interstate Truck Service, Inc., Respondent.

BERNARD J. ROETZEL,
901 First National Tower
Akron 8, Ohio,
Counsel for Revel Oliver, Respondent.